IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 10090 of 2004

Between:

1 P.Jayamma, W/o P.Narasinga Rao,
H.No.4-6-142, Rambagh, Hyderabad.
2 P.Andalu, D/o P.Narasinga Rao,
rep.by 1st Petitioner R/o H.No.4-6-142, Rambagh,
Hyderabad.
3 P.Sai Kiran, S/o P.Narasinga Rao,
rep.by its Mother 1st petitioner H.No.4-6-142,
Rambagh, Hyderabad.

..... PETITIONERS

AND

1 City Civil Court Legal Services Authority, Hyderabad.
2 P.Narasinga Rao, S/o P.Bhoomaiah,
Helper in Govt.of India Mint, Saifabad, Hyderabad.
3 P.Venkatamma, C/o P.Narasinga Rao,
R/o H.No.13-2-560/8/B, Police Quarters, Jali Hanuman
Mangalhat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of Writ of Certiorari to quash the award bearing No. LSA 265 of 2002 dated 26-07-2003 of the 1st respondent as illegal, arbitrary, unconstitutional in the interest of justice.

Counsel for the Petitioners : MRS.K.SHANTHI SRI

Counsel for the Respondent No.1: SMT.M.BHASKARA LAKSHMI

Counsel for the respondent No.2: MR. I. RAMA RAO.

Counsel for the respondent No.3: Ms. Hema Jaiswal.

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

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1 . Petitioners 1 and 2 and respondents 2 and 3 are present in Court. Respondent No.3 is represented by Miss. Hema Jaiswal, being counsel nominated by Legal Services Authority to render legal aid to respondent No.3.

2. This petition has been filed by petitioners seeking to have the award dated 26.07.2003 passed in L.S.A.No.265 of 2002 by the City Civil Court Legal Services Authority, Hyderabad, quashed. By the said award, settlement between respondents 2 and 3 was arrived at and award has been passed in accordance therewith. 2nd respondent herein agreed to deposit a sum of Rs.3500=00 per month into the savings bank account of 3rd respondent each month.

3. The case set up by 1st petitioner is that petitioner No.1 is legally wedded wife of 2nd respondent and petitioners 2 and 3 are natural daughter and son of respondent No.2 from out of wedlock with petitioner No.1. Petitioner No.1 claimed that marriage was performed on 05.05.1983 at Rambagh, Attapur village, Ranga Reddy District. After the birth of the children, 2nd respondent neglected and tried to escape his responsibility to maintain the family. Therefore, petition under Section 125 Cr.P.C., has been filed before the Family Court, Hyderabad, in M.C.No.21 of 1997. Maintenance of Rs.1,000=00 per month was allowed with effect from 08.05.1998. Despite order of maintenance, respondent No.2 has not been making regular payment of monthly maintenance. Criminal M.P.No.110 of 2001 for attachment of salary was also filed. It is further stated that 1st petitioner has also filed a regular civil suit for maintenance of Rs.5,000=00 per month as indigent person. The said O.P.No.701 of 2001 was numbered as O.S.No.49 of 2003. Written statement was filed by respondent No.2 and ultimately on 14.10.2004 the said suit had been decreed. Maintenance of Rs.3,000=00 per month has been granted to the petitioners from the date of filing of the suit, namely, 06.08.2001. It is stated that in order to deprive the petitioner of the right to claim maintenance, respondents 2 and 3 colluded and approached Legal Services Authority before whom settlement was made to provide maintenance of Rs.3,500=00 per month to 3rd respondent and to continue to deposit the said amount in her savings bank account. In this background it is alleged that order obtained by respondents 2 and 3 from Legal Services Authority being collusive and in derogation of the rights of the petitioners is liable to be quashed and set aside.

4. Rule nisi was issued on 29.06.2004 and interim order was also granted staying the operation of the Award dated 26.07.2003 passed by Legal Services Authority.

5. Writ petition has been opposed by respondent No.3. Counter-affidavit has

also been filed by respondent No.2. There was serious allegation as regards the counter-affidavit filed by respondent No.2 dated 25.10.2004. Learned counsel for respondent No.3 states that respondent No.2 is not aware that any counter-affidavit has been filed on his behalf and somebody else had obtained signatures from him. Accordingly we directed learned counsel for respondent No.2 to verify the signatures in the record. Learned counsel for respondent No.2 has identified the signature of respondent No.2 in Court. We had examined respondent No.2 in Court. Respondent No.2 frankly admits that respondent No.3 was married prior to the marriage of 1st petitioner with him. Respondent No.3 was married to him in the year 1982. Two children were born. One daughter has since been expired and one son by name Yadagiri, from out of the wedlock of respondent No.3, is studying in school. His father's name is recorded in the school record as that of respondent No.2. Respondent No.2 has also admitted the marriage with petitioner No.1 and of the fact that there are two children born out of the said wedlock. Narration of the aforementioned facts do suggest that respondent No.3 was married to 2nd respondent prior to the marriage of 1st petitioner and as such in this petition, there is absolutely no ground to quash or set aside the order of the Legal Services Authority. May be that respondent No.2 without informing the petitioner No.1 contacted second marriage. If that be so, marriage of petitioner No.1 is nothing but null and void marriage. In any case, petitioners 2 and 3 would be entitled to maintenance from respondent No.2. There is already a decree obtained by petitioners against 2nd respondent. So long as the said decree is binding, there is no manner of doubt that respondent No.2 is bound by the same. He can, of course, get rid of the same on any grounds available to him.

6. In writ jurisdiction, it would not be appropriate for us to record any finding or to pass any consequential orders since petitioners as well as respondent No.3 are possessed of orders/decrees in their favour which they are entitled to execute in accordance with law. Consequently, finding that the relief prayed for by the petitioners cannot be granted, we dismiss the writ petition with liberty reserved to the petitioners to seek remedy in accordance with law.

Interim order dated 29.06.2004 is vacated. No costs.

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DEVINDER GUPTA. C.J.,

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M. NARAYANA REDDY. J.,

Dated: 08.12.2004.

VRK.

To

1 The Chief Judge, City Civil Court Legal Services Authority, Hyderabad.
2. The Member Secretary, Legal Cell, High Court Buildings, Hyderabad.

3. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE M. NARAYANA REDDY.

W.P.NO. 10090 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 08.12.2004.